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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,710

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Gerd Ritzdorf

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FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

EXAMINER

LEWIS, KIM M

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,710	Applicant(s) RITZDORF ET AL.	
	Examiner Kim M. Lewis	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33 and 35-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33 and 35-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/09 has been entered. As requested in the submission, claims 33, 39-42, 45 and 45 have been amended, and claim 34 has been cancelled.
2. Claims 33 and 35-52 are pending in the instant application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 33, 35-40 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,424,808 ("Schafer et al.") in view of U.S. Patent No. 5,540,922 ("Fabo") and/or U.S. Patent No. 6,051,747 ("Lindqvist et al.").

As regards claims 33, and 35-47 Schafer et al. discloses a wide rectangular elastic bandage fabric that substantially discloses applicants' invention. More specifically, Schafer et al. discloses an elastic fabric bandage which is adhesively or self-adhesively coatable one side (col. 7, line 66-col. 8, line 4). The bandage is highly longitudinally elastic in the warp or weft directions (*i.e.*, in the transverse or longitudinal directions), thereby being unidirectionally elastic. Applicants should note that the bandage fabric itself is a segment and is tearable into further segments, and that the **"highly longitudinally elastic"** property inherently equates to at least 20 elasticity.

Assuming arguendo that applicant contends that the highly longitudinally elastic fabric does not inherently possess an elasticity of between 20% to 150%, the examiner contends that it would have been obvious to one having ordinary skill in the art to modify the elasticity bandage of Schafer et al. to attain an elasticity between 20% to 150% depending upon the indication as recited in col. 2, lines 39-47. Applicant should also note that it has been held that "[w]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, depending upon the indication, it would have been further obvious to one having

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ordinary skill in the art to discover the optimum or workable ranges of elasticity by routine experimentation.

Schafer et al. fails to teach that the adhesive or coadhesive layer has an adhesion force of 1-10.0 N and a releasable protective layer. However, both Fabo and Lindqvist et al. disclose an absorbent wound dressing having a silicone gel adhesive layer that has an adhesion force that either touches or lies within applicant's claimed range (note the range of 0.1 to 2 N at col. 1, lines 61-63 of Lindqvist et al. and the range of 0.2 to 10 N/50 mm at col.3, lines 43-47 of Fabo). Fabo also discloses at col. 2, lines 48-51, that protective strips may be added and then removed from the adhesive surface.

Thus, it would have been obvious to one having ordinary skill in the art to substitute the adhesive of Schafer et al. for the adhesive in Fabo or Lindqvist et al. in order to provide a device with a low adhesion force that is gentle on the skin when removed, and further obvious to add protective strips to the device of Schafer et al. in order to protect the adhesive prior to use as is done in Fabo.

Applicant is reminded that it has been held that where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly, Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements,

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and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S. Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

As regards claim 52, the modified device of Schafer et al. as discussed above in the rejection of claim 33 above substantially discloses all features of the claimed method. The modified device does not explicitly recite that the protective film strips are silicone treated. However, silicone treatment of release sheets is commonly known in the art. Thus, it would have been *prima facie* obvious to one having ordinary skill in the art to employ silicone treated protective strips as an obvious design choice. Furthermore, Schafer et al. fails to teach punching bandage segments. However, it is also commonly known that during the manufacturing of bandages, that bandage rolls or strips are cut or punched from larger rolls. Thus, it would have been *prima facie* obvious to one having ordinary skill in the art to punch/cut the modified bandage of Schafer et al. in order to provide bandage in the desired size.

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6. Claims 41-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Fabo and Lindqvist et al. as applied to claim 40 above, and in further view of U.S. Patent Application Publication 2007/0202245 A1 ("Gantner et al.").

As regards claim 41, the modified device of Schafer fails to disclose polyacrylates in the adhesive. Gantner et al., however, teaches a silicone adhesive having additional components, such as, for example, polyacrylates (polyacrylic acid) for the intended purpose of modifying the adhesive as needed for a particular purpose. Thus, it would have been obvious to one having ordinary skill in the art to add additional components, such as, polyacrylates, to the silicone adhesive of the modified device of Schafer et al. in order to modify the silicone adhesive as needed to impart a particular characteristic thereto.

As regards claims 42 and 43, Schafer discloses the fabric (backing layer) is constructed from non-biodegradable material such as rubber.

Re. claims 44 and 45, the fabric is woven and is therefore breathable due to the spaces between the weft and warp threads.

As regards claims 46 and 47, Schafer et al. discloses that the fabric may be constructed from covered rubber threads and that covering may take place with cotton, staple fibre, polyfilic textured polyamide or other textured synthetic fibers (col. 1, line 67- col. 2, line 19). Absent a critical teaching and/or a showing of unexpected results derived from the use of polyethylene, polypropylene or polyester material as a polymer chosen in the construction of the backing material, the examiner contends that it would have been within the level of ordinary skill in the art to choose a well known synthetic

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polymer such as polyethylene, polypropylene, polyester or polyalkylene terphthalates as the material for the covering since the type of material used does not patentably distinguish applicant's invention.

As regards claims 48-51, the modified device of Schafer et al. fails to teach the unidirectionally elastic adhesive bandage as claimed in claim 45, characterized in that the porosity of the film is in the range of 10 to 50%, the unidirectionally elastic adhesive bandage as claimed in claim 45, characterized in that the backing layer has a warp number in the range of 300-350, and a weft number in the range of 100-140, the unidirectionally elastic adhesive bandage as claimed in claim 49, characterized in that the backing layer has a warp number in the range of 310-330 and a weft number in the range of 120-130, and the unidirectionally elastic adhesive bandage as claimed in claim 33, characterized in that the bandage segment is rectangular with a side ratio of length to width of 1.2:1 to 1.8:1. The examiner contends that the claimed features are not novel and that it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, it would have been obvious to one having ordinary skill in the art, through routine experimentation, to determine the optimum or workable ranges of the porosity, weft and warp numbers and the side ratio of length to width.

Response to Arguments

7. Applicant's arguments filed 10/19/09 have been fully considered but they are not persuasive. Applicant argues that the elasticity discussed in Schafer et al. refers to "only" the warp or weft as being highly elastic, and in contrast applicant refers to the backing layer. The examiner disagrees. Col. 1, lines 47-50 recites, "[a] wide bandage fabric is highly longitudinally elastic in the warp direction and easily tearable in the weft direction or in which it is highly longitudinally elastic in the weft direction and tearable in the warp direction...". Clearly applicant recites the "bandage fabric" is highly longitudinally elastic in a particular direction, either the warp or weft. Note that the bandage fabric constitutes the backing layer. Applicant should note that the claimed bandage is also unidirectionally elastic and is comparable.

8. As to "extrinsic evidence", applicant is directed to col. 2, lines 39-47, wherein it is recited that depending on the indication, the elasticity and compressibility of the bandage can be adjusted through the thickness of the elastic element. Thus, it would have been obvious to one having ordinary skill in the art to modify the elasticity of the bandage fabric of Schafer et al. to obtain an elasticity of between 20% to 150% by adjusting the thickness of the elastic elements, depending upon the indication.

Applicant also argues that Schafer et al., Fabo and Lindqvist does not render the obvious specific combination of elements represented by applicant's claimed invention; specifically, that the elasticity element is not accounted for by the combination of Schafer et al., Fabo and Lindqvist, and that there is no showing of a finite number of identifiable predictable solutions. The examiner disagrees. With respect to the

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elasticity element, Schafer et al. discloses a bandage fabric which is highly longitudinally elastic in either the warp or weft direction (abstract) and at col. 2, lines 39-48 with reference to the bandage fabric recites the following:

“Due to the high elasticity and compressibility in the warp and weft directions which depending on the indication can be adjusted through the thickness of the elastic elements leading to maximum elasticity, the bandage produced from the **wide fabric web** according to the invention can be used as fixing and compression bandages following distortion, luxations, fractures and similar injuries and for preventative purposes and against injuries when playing sports.”(emphasis added)

Also, col. 1, lines 47-20, recites the following:

“A wide **bandage fabric** which is highly longitudinally elastic in the warp and easily tearable in the weft directions or in which is highly longitudinally elastic in the weft direction and tearable in the warp...” (emphasis added).

Thus, the elasticity is directed to the bandage fabric as a whole, which is highly longitudinally elastic in either the warp or weft directions. And as indicated in the rejection and the response to the arguments above, the elasticity can be adjusted depending upon the indication. The adjustment can fall within the range of 20% to 150% which can be discovered by routine experimentation. Applicant should also note that it has been held that “[w]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, depending upon the indication, it would have been further obvious to one having ordinary skill in the art to discover the optimum or workable ranges of elasticity by routine experimentation.

In response to applicant's argument regarding no showing of a finite number of identifiable predictable solutions. The examiner disagrees. Schafer et al. discloses at col. 2, lines 39-42, that the elasticity and compressibility in the warp and weft directions can be adjusted through the thickness of the elastic elements leading to maximum elasticity. Thus, giving a finite solution to the issue of elasticity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Wednesday, from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Kim M. Lewis/
Primary Examiner
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Kml
November 24, 2009